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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife  
and Plants; Listing *Hoffmannseggia*  
*Tenella* as an Endangered Species**

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Final rule.

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**SUMMARY:** The Service determines a  
plant, *Hoffmannseggia tenella* (slender  
rush-pea), to be an endangered species  
under the authority contained in the  
Endangered Species Act of 1973 (Act).

as amended. Historically, this plant has been reported from three localities in Nueces and Kleberg Counties, Texas. Currently, only two populations are known to exist in Nueces County. The species is threatened by destruction of the Blackland Prairie and by encroachment of exotic plants into the native prairie. *Hoffmannseggia tenella* is vulnerable due to a low number of known populations and its restricted distribution. This action implements the protection provided by the Act.

**DATES:** The effective date of this rule is December 2, 1985.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours, at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico 87103.

**FOR FURTHER INFORMATION CONTACT:** Charles McDonald, Botanist, Region 2, Office of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

#### SUPPLEMENTARY INFORMATION

##### Background

Historically, this plant has been known from two Texas counties. It was first collected by Mrs. F.E. Clements between Robstown and Alice, Nueces County, Texas on November 22, 1931. B.C. Tharp and L.O. Williams subsequently described the plant as *Hoffmannseggia tenella* (Williams, 1936). Another collection was made in 1964 from the King Ranch in Kleberg County. Until April 1985, the only other known records were collections from Nueces County by Mary Johnson in 1976 and Geyata Ajilvsgi in 1982. A field survey in 1982 located one population containing three individual plants. This population was found in Nueces County near Petronila Creek and State Highway 70 in an eroded area and along the highway in a gravel dump. Two plants in the population were on private property, and one plant was on adjacent State Highway right-of-way (Ajilvsgi, Texas A&M University, pers. comm., 1984). In April 1985, Ms. Jackie Poole located approximately 25 plants at this site, and approximately 10,000 plants at a new locality, in a rural cemetery in southern Nueces County (Jackie Poole, Texas Natural Heritage Program, pers. comm., 1985).

*Hoffmannseggia tenella* is a perennial in the pea family (Fabaceae) with stems 8 to 15 centimeters (3-6 inches) tall terminating in 3 to 5 flowered inflorescences without glands. The flowers are orange and approximately 5

stamens. The leaves are bipinnately compound; petioles are up to 13 centimeters (5 inches) long, leaflets are oblong, 2 to 4 millimeters (0.08-0.16 inches) in length and 1 to 2 millimeters (.04-.08 inches) broad in 5 or 6 pairs on each of 3 to 7 pinnae. The legumes are 12 to 15 millimeters (0.5 inches) long, 4 to 6 millimeters (0.2-0.3 inches) broad, and contain 2 to 4 seeds. Flowering usually occurs from early March to June, then sporadically thereafter depending on rainfall.

The two known populations of *Hoffmannseggia tenella* occur in the Blackland Prairie area of the Gulf Coastal Prairie. At the larger population, plants occur intermixed with native buffalo grass (*Buchloe dactyloides*) and Texas speargrass (*Stipa leucotricha*) (Poole, pers. comm., 1985). At the smaller population, plants occur in barren hard clay soil of creek banks where King Ranch bluestem (*Bothriochloa ischaemum* var. *songarica*) and Bermuda grass (*Cynodon dactylon*) are absent (Mahler, 1982). These latter grasses have been introduced for roadside management and range improvement and have replaced much of the native vegetation of the region. Based on the two known populations it appears *Hoffmannseggia tenella* is a component of slightly to highly disturbed prairie and can persist until crowded out by competition from other encroaching species. The population biology and ecology of this species, however, are relatively unknown and additional studies will be needed when management plans are developed.

Federal action involving this species began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. *Hoffmannseggia tenella* was included in the Smithsonian petition and the 1976

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, *Federal Register* (44 FR 70796), the Service published a notice withdrawing that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. A revised list of plants under review for listing as endangered or threatened species was published in the December 15, 1980, *Federal Register* (45 FR 82480), and it included *Hoffmannseggia tenella* as a category 1 species. Category 1 comprises taxa for which the Service presently has sufficient biological information to support the appropriateness of their being listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Hoffmannseggia tenella*, was October 13, 1983. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *Hoffmannseggia tenella* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. A proposed rule published November 21, 1984 (49 FR 45884), constituted the next required finding that the petitioned action was warranted in accordance with section 4(b)(3)(B)(ii) of the Act.

A status report compiled by Dr. W.F. Mahler in 1982 and investigations carried out by Service botanists and Ms. Jackie Poole of the Texas Natural Heritage Program have provided new biological data that are included in this final rule. These new data include recent documentation of the species' limited distribution and threats to the species.

#### Summary of Comments and Recommendations

In the November 21, 1984, proposed rule (49 FR 45884) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific

parties were contacted and requested to comment. A newspaper notice was published in the *Corpus Christi Caller Times* on Wednesday, December 12, 1984, which invited general public comment. Seven comments were received and are discussed below. No public hearing was requested or held.

The International Union for Conservation of Nature and Natural Resources (IUCN) noted that the correct spelling of the plant's generic name is *Hoffmannseggia* rather than *Hoffmanseggia* as it appeared in the proposed rule. The spelling has been corrected in the final rule. The IUCN also supported the proposal. The Soil Conservation Service stated that if the plant is a pioneer species, as the Service suggests in the proposed rule, then disking, rototilling, or prescribed burning near the known population might result in the germination of dormant seeds. The Service agrees that this may be a useful management technique and it will be considered along with other alternatives in the recovery of this species. Mr. Harold E. Beaty, leader of the Texas Plant Recovery Team, commented that Dr. W.F. Mahler, Ms. Geyata Ajilvsgi, and others are very knowledgeable about this plant and that their observations substantiate the need for listing the species. Dr. Duane Isley of Iowa State University suggested that other regional herbaria in Texas be checked for specimens and that, as only one population is presently known, it would appear that the species warrants listing. The Service responds that regional herbaria were checked by Dr. William Mahler as part of the status report. Other information was solicited from Texas botanists resulting in a response from Dr. George G. Williges of Texas A&I University, who reported one specimen from near Bishop, Texas. The National Park Service stated that the species does not occur on its lands and it therefore had no specific recommendations regarding the proposed listing. Letters received from James W. Kessler and Ms. Geyata Ajilvsgi supplied no new substantive information about the species and made no specific comments on the proposal.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Hoffmannseggia tenella* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424)

were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hoffmannseggia tenella* Tharp and L.O. Williams (slender rush-pea) are as follows:

**A. The present or threatened destruction, modification, or curtailment of its habitat or range.** The most serious threat to the continued existence of *Hoffmannseggia tenella* is habitat alteration. The Petronila Creek population in Nueces County was found growing in an eroded area, which indicates these plants do better in the absence of competition (Ajilvsgi, pers. comm., 1984). At the cemetery site, the plant occurs in association with buffalo grass and Texas speargrass (Poole, pers. comm., 1985). Buffalo grass is a grass that increases or invades after disturbance of the climax dominant, little bluestem (*Schizachyrium scoparium*) on the Blackland prairies (Gould, 1975). *Hoffmannseggia tenella* may be more successful in disturbed situations. Disturbed and native grassland habitat suitable for *Hoffmannseggia tenella* in the Texas Gulf Coastal Prairie has been severely limited because nonnative, introduced grasses, such as King Ranch bluestem and Bermuda grass, have been extensively used for range improvement and have escaped into uncultivated areas. As a result, native grasses and forbs are being eliminated. Management, through seeding with King Ranch bluestem and Bermuda grass, has reduced available habitat along public roads and highways. These practices, along with grazing and cultivation, have destroyed the natural system of the Texas Gulf Coastal Prairie that formerly provided more widespread habitat for *Hoffmannseggia tenella*. With only two known populations in Nueces County, this species is extremely vulnerable, and may be subject to complete elimination if there is modification of its remaining habitat.

**B. Overutilization of commercial, recreational, scientific, or educational purposes.** Commercial trade in this plant is not known to exist; however, because of its restricted range, collecting and vandalism pose a threat to the survival of this species. The existing populations are not located on Federal lands and therefore would not be protected from taking by the Endangered Species Act. Excessive recreational and scientific use is not known nor anticipated to occur.

**C. Disease or predation.** No threats are known.

**D. The inadequacy of existing regulatory mechanisms.** Currently, *Hoffmannseggia tenella* is not protected by either Federal or State laws.

**E. Other natural or manmade factors affecting its continued existence.** The specific habitat requirements of *Hoffmannseggia tenella*, and the limited distribution and small number of populations, make the existence of this species especially precarious in the event of any activity that results in the loss of a significant number of individuals.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Hoffmannseggia tenella* as endangered without critical habitat. Endangered status seems appropriate because there are only two known populations of this species, and the native grass habitat necessary to this plant is rapidly decreasing because of agricultural development, grazing, and the introduction of King Ranch bluestem and Bermuda grass. The reasons for not designating critical habitat are discussed below.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time due to its restricted geographical distribution and easy accessibility. The Act does not protect endangered plants from taking or vandalism on lands that are not under Federal jurisdiction. This would result in an especially severe problem for *Hoffmannseggia tenella*, whose habitat is easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Determining critical habitat for this species would make it more vulnerable to taking by collectors and by vandalism. Therefore, it would not be prudent to determine critical habitat for *Hoffmannseggia tenella* at this time.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition

through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990, June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. However, *Hoffmannseggia tenella* is not known to occur on Federal lands, and there are no known Federal actions that may affect this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Hoffmannseggia tenella*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply

to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The prohibition now applies to *Hoffmannseggia tenella*. Permits for exceptions to this prohibition are available through regulations published September 30, 1985 (50 FR 39681), to be codified at 50 CFR 17.62. At present, no populations of *Hoffmannseggia tenella* are known to exist on Federal land. It is expected that few collecting permits for this species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, RM. 600-Broyhill Bldg., U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

#### Literature Cited

- Gould, F.W. 1975. Texas Plants—a checklist and ecological summary. The Texas Agricultural Experiment Station. College Station, Texas.  
 Mahler, W.F. 1982. Status report on *Hoffmannseggia tenella*. U.S. Fish and Wildlife Service, Office of Endangered

Species, Albuquerque, New Mexico. 10 pp.  
 Williams, L.O. 1936. Field and herbarium studies, IV. *Annals of the Missouri Botanical Garden* 23:451-452.

#### Authors

The primary authors of this final rule are Heather A. Stout and Charles B. McDonald, Endangered Species Office, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972). A preliminary listing package was provided by Catherine Coats, Herbarium, Southern Methodist University, Dallas, Texas 75275. The editor was E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975 or FTS 235-1975). Status information was provided by Dr. W.F. Mahler, Herbarium, Southern Methodist University, Dallas, Texas 75275.

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Regulation Promulgation

#### PART 17—AMENDED

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants:

#### § 17.12 Endangered and threatened plants.

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 (h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family: Hoffmannseggia tenella	Slender rush-pea	U.S.A. (TX)	E	209	NA	NA

Dated: October 8, 1985.

**P. Daniel Smith,**

*Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.*

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